

HON. RON PAUL OF TEXAS BEFORE THE US HOUSE OF REPRESENTATIVES September 30, 2004

### Cultural Conservatives Lose if Gay Marriage is Federalized

Mr. Speaker, while I oppose federal efforts to redefine marriage as something other than a union between one man and one woman, I do not believe a constitutional amendment is either a necessary or proper way to defend marriage. While marriage is licensed and otherwise regulated by the states, government did not create the institution of marriage. In fact, the institution of marriage most likely pre-dates the institution of government! Government regulation of marriage is based on state recognition of the practices and customs formulated by private individuals interacting in civil society. Many people associate their wedding day with completing the rituals and other requirements of their faith, thus being joined in the eyes of their church and their creator, not with receiving their marriage license, thus being joined in the eyes of the state. If I were in Congress in 1996, I would have voted for the Defense of Marriage Act, which used Congress's constitutional authority to define what official state documents other states have to recognize under the Full Faith and Credit Clause, to ensure that no state would be forced to recognize a "same sex" marriage license issued in another state. This Congress, I was an original cosponsor of the Marriage Protection Act, HR 3313, that removes challenges to the Defense of Marriage Act from federal courts' jurisdiction. If I were a member of the Texas legislature, I would do all I could to oppose any attempt by rogue judges to impose a new definition of marriage on the people of my state. Having studied this issue and consulted with leading legal scholars, including an attorney who helped defend the Boy Scouts against attempts to force the organization to allow gay men to serve as scoutmasters, I am convinced that both the Defense of Marriage Act and the Marriage Protection Act can survive legal challenges and ensure that no state is forced by a federal court's or another state's actions to recognize same sex marriage. Therefore, while I am sympathetic to those who feel only a constitutional amendment will sufficiently address this issue, I respectfully disagree. I also am concerned that the proposed amendment, by telling the individual states how their state constitutions are to be interpreted, is a major usurpation of the states' power. The division of power between the federal government and the states is one of the virtues of the American political system. Altering that balance endangers self-government and individual liberty. However, if federal judges wrongly interfere and attempt to compel a state to recognize the marriage licenses of another state, that would be the proper time for me to consider new legislative or constitutional approaches. Conservatives in particular should be leery of anything that increases federal power, since centralized government power is traditionally the enemy of conservative values. I agree with the assessment of former Congressman Bob Barr, who authored the Defense of Marriage Act: "The very fact that the FMA [Federal Marriage Amendment] was introduced said that conservatives believed it was okay to amend the Constitution to take power from the states and give it to Washington. That is hardly a basic

principle of conservatism as we used to know it. It is entirely likely the left will boomerang that assertion into a future proposed amendment that would weaken gun rights or mandate income redistribution." Passing a constitutional amendment is a long, drawn-out process. The fact that the marriage amendment already failed to gather the necessary two-thirds support in the Senate means that, even if two-thirds of House members support the amendment, it will not be sent to states for ratification this year. Even if the amendment gathers the necessary two-thirds support in both houses of Congress, it still must go through the time-consuming process of state ratification. This process requires three-quarters of the state legislatures to approve the amendment before it can become effective. Those who believe that immediate action to protect the traditional definition of marriage is necessary should consider that the Equal Rights Amendment easily passed both houses of Congress and was quickly ratified by a number of states. Yet, that amendment remains unratified today. Proponents of this marriage amendment should also consider that efforts to amend the Constitution to address flag burning and require the federal government to balance the budget have been ongoing for years, without any success. Ironically, liberal social engineers who wish to use federal government power to redefine marriage will be able to point to the constitutional marriage amendment as proof that the definition of marriage is indeed a federal matter! I am unwilling either to cede to federal courts the authority to redefine marriage, or to deny a state's ability to preserve the traditional definition of marriage. Instead, I believe it is time for Congress and state legislatures to reassert their authority by refusing to enforce judicial usurpations of power. In contrast to a constitutional amendment, the Marriage Protection Act requires only a majority vote of both houses of Congress and the president's signature to become law. The bill already has passed the House of Representatives; at least 51 senators would vote for it; and the president would sign this legislation given his commitment to protecting the traditional definition of marriage. Therefore, those who believe Congress needs to take immediate action to protect marriage this year should focus on passing the Marriage Protection Act. Because of the dangers to liberty and traditional values posed by the unexpected consequences of amending the Constitution to strip power from the states and the people and further empower Washington, I cannot in good conscience support the marriage amendment to the United States Constitution. Instead, I plan to continue working to enact the Marriage Protection Act and protect each state's right not to be forced to recognize a same sex marriage.